

Court of Appeals, State of Michigan

ORDER

Gwendolyn McClendon v Dr Dimitrios Apostolou MD

Docket No. 260583

LC No. 02-226917-NH

Brian K. Zahra
Presiding Judge

Helene N. White

Kirsten Frank Kelly
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion to waive the stay requirements of MCR 7.209 is GRANTED.

The Court considers the application for leave to appeal and orders, pursuant to MCR 7.205(D)(2), that the January 14, 2005, order of the Wayne Circuit Court denying summary disposition to defendants hereby is REVERSED. In *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004), reh den 470 Mich 1204 (2004), the Michigan Supreme Court held that notice of intent tolling does not apply to the wrongful death savings provision. This Court ruled in *Ousley v McLaren*, 264 Mich App 486; 691 NW2d 817 (2004), that *Waltz* had retroactive application. Plaintiff therefore may not rely on the filing of a notice of intent to toll the two-year period in which to file her lawsuit, which expired on February 2, 2002, before she filed the instant lawsuit. See *Farley v Advanced Cardiovascular Health Specialists*, __ Mich App __ (Docket Nos. 256776, 256799, 257988, issued 05/26/05). The case is REMANDED for further proceedings consistent with this order.

The motion for stay is DENIED as moot.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 28 2005

Date

Sandra Schultz Mengel
Chief Clerk